

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CORBO PROPERTIES, LTD.,)	CASE NO. 1:09-CV-0501
)	
Plaintiff)	
)	JUDGE KATHLEEN M. O'MALLEY
vs.)	
)	
SENECA INSURANCE)	
COMPANY INC., et al.,)	<u>DEFENDANTS' MOTION TO DISMISS</u>
)	
Defendants)	

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendants Seneca Insurance Company, Inc. ("Seneca"), Strongrich Reschly, Inc., Jeffrey M. Maxwell, Churchwell Fire Consultants, Inc., and Brian Churchwell move the Court to dismiss with prejudice and in its entirety Plaintiff's Complaint against Strongrich Reschly, Inc., Jeffrey M. Maxwell, Churchwell Fire Consultants, Inc. and Brian Churchwell on the grounds that Plaintiff has failed to state a claim against these defendants upon which relief can be granted.

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Seneca also moves the Court to dismiss with prejudice Plaintiff's claims against Seneca for alleged violation of the Ohio Administrative Code and Ohio Revised Code (Complaint ¶¶5-6) on the grounds that no private cause of action exists under Ohio law for alleged violation of the alleged administrative and statutory provisions, and thus, such allegations fail to state a claim against Seneca upon which relief can be granted.

Finally, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Seneca also moves the Court to dismiss with prejudice Plaintiff's claims against Seneca for "negligence" (Complaint ¶8) on the grounds that Ohio law does not recognize a claim for negligence by an insured against its insurer, and thus, Plaintiff has failed to state a claim for negligence against Seneca upon which relief can be granted.

A Memorandum in Support of this Motion is attached hereto and incorporated herein. As permitted by the Federal Rules of Civil Procedure, this Motion to Dismiss is being filed in lieu of an Answer to Plaintiff's Complaint by Defendants Strongrich Reschly, Inc., Jeffrey M. Maxwell, Churchwell Fire Consultants, Inc. and Brian Churchwell. However, Defendant Seneca will file a Separate Answer to Plaintiff's Complaint.

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Brian Churchwell

CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2009, the foregoing Defendants' Motion to Dismiss was electronically filed. Notice of this filing will be sent to counsel of record for all parties by operation of the Court's Electronic Case Filing system. Parties and their counsel may access this filing through the Court's Electronic Case Filing System. Counsel of record include:

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s/ Robert E. Chudakoff

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